

(2) Employees requesting a waiver of the late filing fee from the designated agency ethics official must request the waiver in writing with supporting documentation. The designated agency ethics official's determination must be made in writing to the employee with a copy placed in the employee's public financial disclosure report file. The designated agency ethics official may consult with the Office of Government Ethics prior to approving any waiver of the late filing fee.

(c) *Procedure.* (1) The designated agency ethics official shall maintain a record of the due dates for all public reports which the employees of that agency must file, along with the new filing dates under extensions which have been granted. Each report received by the agency shall be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency shall advise the delinquent filer, in writing, that:

(i) Because his financial disclosure report is more than thirty days overdue, a \$200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and § 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the \$200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the \$200 fee when filing his late report, it shall be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the \$200 late filing fee, the collecting agency shall note the payment in its records, and shall then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and section 8030.30 of Volume 1 of the Treasury Financial Manual. If payment is not forthcoming, agency debt collection procedures shall be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) *Late filing fee not exclusive remedy.* The late filing fee is in addition to other sanctions which may be imposed for late filing. See § 2634.701 of this subpart.

(e) *Confidential filers.* The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under § 2634.701(d) of this subpart.

(f) *Date of filing.* The date of filing for purposes of determining whether a public financial disclosure report is filed more than thirty days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

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Subpart H—Ethics Agreements

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§ 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

§ 2634.802 Requirements.

(a) *Ethics agreement defined.* The term *ethics agreement* shall include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

(1) Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action;

(2) Divestiture of a financial interest;

(3) Resignation from a position with a non-Federal business or other entity;

(4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) *Time limit.* The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803 (a), (b), or (c) of this subpart), or by the designated agency ethics official for all other ethics agreements.

Example An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval would have to be obtained from the Office of Government Ethics to extend the customary three-month period.

§ 2634.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the Senate.* (1) In the case of a nominee referred to in § 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the

Senate confirmation committee. The nominee shall immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(b) *Incumbents in positions requiring the advice and consent of the Senate.* In the case of a position which required the advice and consent of the Senate, the designated agency ethics official shall keep the Office of Government Ethics apprised of any ethics agreements which the incumbent makes, or which become known to the designated agency ethics official during the incumbent's term in his position.

(c) *Designated agency ethics officials not holding advice-and-consent positions, and employees of the Offices referred to in § 2634.602(c)(1)(v).* A designated agency ethics official who has entered into a ethics agreement, and who is neither a nominee to, nor an incumbent in, a position which requires the advice and consent of the Senate, as well as each employee of the Executive Office of the President or the Office of the Vice President who is referred to in § 2634.602(c)(1)(v), shall include with his initial financial disclosure report submitted to the Office of Government Ethics any ethics agreement undertaken by such official or employee. He shall also apprise the Office of Government Ethics promptly of any subsequent ethics agreement.

(d) *Other reporting individuals.* Other reporting individuals desiring to enter into ethics agreement may do so with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall promptly apprise the designated agency ethics official of the agreement.

[57 FR 11825, Apr. 7, 1992; 57 FR 21855, May 22, 1992]